IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT JAIPUR

JUDGMENT

DB. CIVIL WRIT (PAROLE) NO. 1653/07

(SHRAWAN Vs. STATE OF RAJ. & ORS.)

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DATE OF JUDGMENT : JULY 2, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE R.S. CHAUHAN

Mr. Sumer Singh for the petitioner.
Mr. B.K. Shrama Addl. G.A. for the respondents.

BY THE COURT : (PER HON'BLE CHAUHAN J.)

Convicted under the Narcotics Drugs & Psychotropic Substances Act ('NDPS', for short), sentenced to 10 years of rigorous imprisonment, having served six years of imprisonment, the petitioner was hoping that he would be granted the first regular parole under the Rajasthan Prisoners (Release of Parole) Rules, 1958 ('the Rules', for short). However, vide order dated 8.7.2004 the Advisory Committee under the Rules rejected the petitioner's case for first regular parole. Hence, this petition before this court.

Mr. Sumer Singh, the learned counsel for the petitioner has vehemently argued that under Rule 9 of the Rules once a convicted prisoner has completed one-fourth of his sentence and in case his conduct is satisfactory in the jail, the prisoner becomes entitled to the first parole of 20 days. According to him, the petitioner has already served more than one-fourth of his sentence, yet he has not been granted the benefit of first parole. Moreover, he has been denied this benefit only on the ground that the District Collector and the Superintendent of Police Bhilwara have sent adverse report against him. However, the reports are not based on any evidence, but have been sent mechanically. Since the petitioner's conduct has been good in the jail during his incarceration, he deserves to be granted the benefit of first parole.

On the other hand, Mr. B.K. Sharma, the learned Government Advocate has argued that according to the circular dated 2.5.2000, issued by the Jail Department prisoners convicted under the NDPS Act and TADA Act are no longer eligible for grant of parole. Therefore, the petitioner has rightly been denied the benefit of parole.

We have heard both the learned counsels.

In the case of Jameel Ahmed Vs. State of Raj. & Ors. (D.B. Civil Writ (Parole) No. 4953/06, decided on 5.1.2007) this Court had an opportunity to examine the circular issue by the Jail Department. In the said case, this court had held as under :-

> "According to Rule 13 of the Rules of 1958 parole is not a right which a prisoner can claim. In fact, parole – part of the reformative theory, is a privilege given by the State to the convicted prisoners. While granting parole, the State has to keep in mind certain cardinal facts i.e., the nature of the crime committed, the conditions in which the crime was committed, the impact of the crime committed on the society at large, the possibility of the prisoner absconding in case he is let out on parole for a limited period, the possibility of his repeating a crime of a similar nature while out on parole etc. Since the parole is a privilege which is given to the convicted prisoner such a privilege is not applicable carte blanche. Certain categories of convicted prisoners can be denied the privilege of parole by the State.
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> Remission and parole are not actual rights of the prisoners. In fact, they are privileges granted by the State to the convicted prisoners. Therefore, a convicted prisoner cannot claim these two privileges as their vested rights. Jurisprudentially, there is a difference between right and privilege. Rights are classified under two categories of either being a fundamental right under the Constitution, or a statutory right granted by a Statute. On the other hand, a privilege is granted by the State under certain conditions and privilege by their very nature can equally be taken away by the State Whereas rights are universal in nature, privileges can be given to certain specific groups and need not necessarily be

> universal in its application. Remission and parole are part of the reformative theory of punishment. Since they are privileges granted by the State, it is not necessary that all the convicted prisoners must have the privilege extended to them. Certain categories of prisoners can be refused these privileges. In case the refusal is based on intelligent, differentia and has a nexus to the object of the Rules, therefore, the refusal is not violative of Article 14 of the Constitution of India. Since a privilege can be denied under the law, it is procedure established by law, therefore, such a denial would not be violative of Article 21 of the Constitution of India. Undoubtedly, the freedom of movement is cribbed, cabined and confined by the very act of imprisoning a prisoner. Therefore, the personal liberty is curtailed by a judicial order under a procedure established by law. It is a policy decision of the State to decide the category of prisoners who are entitled to the privilege of remission and parole and those who are dis-entitled for such a privilege."

Therefore, in our considered opinion the petitioner cannot be granted the benefit of parole as prisoners convicted under the NDPS Act are no longer eligible for grant of parole.

Therefore, this petition is devoid of any merit. It is, hereby dismissed.

(R.S. CHAUHAN) J. (SHIV KUMAR SHARMA) J.

MRG.